STATE OF MICHIGAN

COURT OF APPEALS

VONZELLA YOUNG, Personal Representative of the Estate of MILDRED P. SILA, Plaintiff-Appellant, v SPECTRUM HEALTH-REED CITY CAMPUS, Defendant-Appellee.	UNPUBLISHED May 18, 2006 No. 259644 Osceola Circuit Court LC No. 02-009613-NH

Before: Sawyer, P.J., and Kelly and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order dismissing her medical malpractice claim with prejudice. The trial court found plaintiff's notice of intent and affidavit of merit insufficient because they did not contain particularized statements explaining the manner in which defendant's alleged negligence proximately caused the decedent's cardiac arrest and resultant death. We affirm.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Under MCR 2.116(C)(7), where the claim is allegedly barred, the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party. *Id.*, 119. Under MCR 2.116(C)(8), only the pleadings may be considered, and the motion is granted where the claims are legally unenforceable. *Id.*, 119-120. When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id.*, 120. Whether a party has standing is also a question of law reviewed de novo. *46th Circuit Trial Court v Crawford Co*, 266 Mich App 150, 177; 702 NW2d 588 (2005). Issues of statutory interpretation similarly present questions of law reviewed de novo. *Rohde v Ann Arbor Pub Schools*, 265 Mich App 702, 705; 698 NW2d 402 (2005).

A medical malpractice claimant may not commence a suit against a health facility without, among other things, first providing to the facility a written notice of intent setting forth several statutorily enumerated statements about the intended suit. MCL 600.2912b; *Roberts v Mecosta Co Gen Hosp* (*After Remand*), 470 Mich 679, 685-686; 684 NW2d 711 (2004). The

trial court found that plaintiff's notice of intent failed to meet MCL 600.2912b(4)(e), which requires a statement of "the manner in which it is alleged the breach of the standard of practice or care was the proximate cause of the injury claimed in the notice." Plaintiff contends that the trial court erred in so finding. We disagree.

A claimant is not required to ensure that the statements required by MCL 600.2912b are *correct*, but the claimant must make a good faith effort to "set forth [the information] with that degree of specificity which will put the potential defendants on notice as to the nature of the claim against them." *Roberts*, *supra* at 691, 701. The expected level of specificity must be considered in light of the fact that discovery would not yet have begun. *Id*. This is functionally indistinguishable from the notice-pleading standard applicable to general civil complaints and answers. This Court has observed complaints must "contain a 'statement of the facts' and the 'specific allegations necessary reasonably to inform the adverse party of the nature of the claims' against it." *Nationsbanc Mortgage Corp of Georgia v Luptak*, 243 Mich App 560, 566; 625 NW2d 385 (2000), quoting MCL 2.111(B). More generally, "the primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Stanke v State Farm Mut Automobile Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993), citing 1 Martin, Dean & Webster, Michigan Court Rules Practice, p 186. Our Supreme Court expressly noted that this information need not "be in any particular format." *Roberts*, *supra* at 696.

Here, the notice of intent sets forth in commendable detail the factual basis for the claim, the relevant standard of care, what defendant allegedly did wrong, why that breached the standard of care, and what defendant should have done to comply with the standard of care. However, the only statement of causation is that if defendant had "recognized and reported the significant cardiac changes in their patient, provided continuing monitoring and observations of their patient, and communicated [her] symptoms to the physicians, she would not have experienced the cardiac arrest and died." We see nothing in this conclusory assertion to explain the manner in which defendant's breach caused the decedent's death. Although in the context of a statement of the standard of care, our Supreme Court has explained that there may be situations where the nature of a claim "would be obvious to a casual observer" even with minimal articulation, such as where a physician is alleged to have amputated the wrong limb. *Roberts*, *supra* at n 12. This situation is not so obvious. Plaintiff failed to specify *the manner in which* more adequate monitoring and reporting of the decedent's condition would have averted her cardiac arrest and death. The trial court correctly held that plaintiff failed to adequately allege proximate cause in her notice of intent.[1]

Plaintiff then argues that this Court should apply the doctrine of judicial or equitable tolling to excuse this deficiency. We disagree. We see no indication in the record that this issue was preserved below, so we need not review it. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). In any event, equitable tolling would require plaintiff's

[1] Therefore, we have no need to address whether the trial court correctly reached a similar conclusion regarding plaintiff's affidavit of merit.

noncompliance with the statutory requirements to be the result of some *external* influence. See, *e.g.*, *Bryant v Oakpointe Villa Nursing Centre*, 471 Mich. 411, 432; 684 NW2d 864 (2004) (applying equitable tolling because the plaintiff was understandably confused about an issue that had "troubled the legal profession"). Nothing in the record suggests that plaintiff was somehow induced to omit critical information because of any understandable confusion over whether it was necessary. Equitable tolling would be inappropriate here.

Plaintiff finally argues that this case should not be dismissed with prejudice. We disagree. Plaintiff first argues that compliance with MCL 600.2912b is only necessary to toll the limitations period for 186 days under MCL 600.5856(c), which was unnecessary here because she timely filed her complaint even without applying the notice-tolling period. This is irrelevant: "a person *shall not commence* an action alleging medical malpractice" without complying with MCL 600.2912b. *Roberts, supra* at n 2, quoting MCL 600.2912b(1) (emphasis supplied by the *Roberts* Court). Plaintiff's noncompliance precluded her from commencing this action at all. Plaintiff then argues that a successor personal representative should be permitted a fresh two-year savings period under MCL 600.5852 in which to bring this claim anew. See *Eggleston* v *Bio-Medical Applications of Detroit, Inc*, 468 Mich 29; 658 NW2d 139 (2003). Unlike the plaintiff in *Eggleston*, insufficient additional time remained after observance of the tolling provision. The *Eggleston* rule is inapplicable under these circumstances. *McLean v McElhaney*, 269 Mich App 196, 201-202; __ NW2d __ (2005).

Affirmed.

/s/ David H. Sawyer
/s/ Kirsten Frank Kelly
/s/ Alton T. Davis